No. 18-96

IN THE
Supreme Court of the United States

TENNESSEE WINE AND SPIRITS RETAILERS ASSOCIATION,
Petitioner,
v.
CLAYTON BYRD, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF AMICI CURIAE OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE*

The National Conference of State Legislatures (NCSL) is a bipartisan organization that serves the legislators and staffs of the Nation's 50 States, its Commonwealths, and Territories. NCSL provides research, technical assistance, and opportunities for policymakers to exchange ideas on the most pressing state issues. NCSL advocates for the interests of state governments before Congress and federal agencies, and regularly submits amicus briefs to this Court in cases, like this one, that raise issues of vital state concern.

The National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the Nation's 3,069 counties through advocacy, education, and research.

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans.

The U.S. Conference of Mayors ("USCM"), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,200 cities at present. Each city is

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* No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief and such consents have been docketed.

represented in the USCM by its chief elected official, the mayor.

The International City/County Management Association ("ICMA") is a nonprofit professional and educational organization of over 9,000 appointed chief executives and assistants serving cities, counties, towns, and regional entities. ICMA's mission is to create excellence in local governance by advocating and developing the professional management of local governments throughout the world.

The International Municipal Lawyers Association (IMLA) has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

State and local governments have broad responsibilities for regulating private conduct within their respective jurisdictions. That responsibility includes repealing and modifying laws over time as additional information becomes known and as the views of citizens evolve and change. State and local officials are responsible to the citizens who elected them for the decisions they make regarding how to regulate private conduct.

The decision below invalidated a state law regulating the sale of alcohol on the ground that the

law violates the dormant Commerce Clause. In doing so, that decision failed to give appropriate weight to the extraordinarily broad discretion given to the States by the Twenty-first Amendment to regulate sale and use of alcohol within their borders. This Court's decision will have a substantial impact on the rights and responsibilities of state and local governments to regulate conduct within their jurisdictions.

SUMMARY OF ARGUMENT

This Court's analysis of the Twenty-first Amendment makes clear that States enjoy broad power to regulate the sale and use of alcohol within their borders. Early cases suggest that there are no dormant Commerce Clause limitations on that power. *See State Bd. of Equalization of Cal. v. Young's Mkt. Co.*, 299 U.S. 59, 62 (1936). More recent cases do not go that far but continue to recognize that "[t]he aim of the Twenty-first Amendment was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use." *Granholm v. Heald*, 544 U.S. 460, 484 (2005). It is within this context that the Court should consider Tennessee's two-year durational residency requirement for retail alcohol sales licenses at issue in this case.

The text and history of the Twenty-first Amendment demonstrate that States should be free to regulate alcohol with minimal, if any, limitations imposed by the dormant Commerce Clause. For the reasons explained by the dissents in *Granholm*, there is a compelling argument that state regulation should be entirely exempt from dormant Commerce Clause review. The Court need not go nearly that far, however, to recognize that Tennessee's two-year residency requirement for a retail license falls well within the authority of the States to regulate alcohol.

Application of the dormant Commerce Clause and Twenty-first Amendment is often presented as a binary choice: either the non-discrimination principle of the dormant Commerce Clause applies with full force to State regulation of alcohol or there are no

dormant Commerce Clause limitations whatsoever on state laws regulating alcohol.

Amici propose, without revisiting *Granholm*, that the Court can and should reconcile these divergent approaches by adopting an exceedingly deferential standard for dormant Commerce Clause review of state alcohol regulation. In particular, a State regulation of alcohol should be upheld if there is any possible rational basis for the regulation based on a legitimate State interest in controlling the sale and use of alcohol within the State. The dormant Commerce Clause should be held to invalidate a State regulation of alcohol only if there is no rational basis for the regulation other than discrimination against out-of-state economic interests. By adopting this kind of rational basis test, the Court would honor the special power and discretion afforded to State regulation of alcohol under the Twenty-first Amendment, while at the same time preserving the core purpose of the dormant Commerce Clause by prohibiting State regulations that could have no purpose other than blatant discrimination against out-of-state economic interests.

The proposed test harmonizes the Court's cases and important principles at stake by affording the States exceedingly broad discretion to regulate alcohol within their own borders, but at the same time prohibiting States from attempting to regulate out-of-state economic activity (as, for example, with price-affirmation statutes) and from enacting regulations that could have no purpose other than to benefit in-state economic interests at the expense of out-of-state economic interests. The proposed test also recognizes that the Twenty-first Amendment

was intended to limit severely the Commerce Clause limitations on state power to regulate alcohol, but does not immunize or limit state laws from review under other provisions of the Constitution, such as the Equal Protection Clause of the Fourteenth Amendment.

The Sixth Circuit in the decision below read *Granholm* as requiring application of the non-discrimination principle in neutral fashion, with the courts scrutinizing the intent and effect of State regulation of alcohol as though it were an ordinary article of commerce. But if that were the correct approach, the legitimacy of the three-tier system itself would be in question, since that system certainly has a negative impact on out-of-state economic interests. Instead, courts should review State regulation of alcohol with a heavy thumb on the scale in favor of upholding the regulation, striking it down only if there could be no rational basis on which the regulation serves a legitimate interest in regulating alcohol and instead could have no purpose other than discrimination against out-of-state economic interests. Under that standard, the Tennessee two-year residency requirement easily passes muster.

Affording that kind of deference to State regulation of alcohol makes sense because States and local governments bear the brunt and cost of problems associated with alcohol sales and use. Those problems include, for example, vandalism, looting, and other damage due to drunk-and-disorderly behavior following sporting and music events where alcohol consumption is high. Abuse of alcohol also impacts workplace productivity, health

care expenses, law enforcement and criminal justice expenses, and motor vehicle crashes, including drunk driving. The impact of these problems varies widely from State to State, as do local conditions and views. States and municipalities need regulatory flexibility to address these critical issues at a local level. The proposed rational basis test ensures that States have the discretion they need to deal with these issues.

The practical implications of the decision below extend well beyond the production, manufacture, and retail sale of alcohol. For example, States and local governments face difficult questions regarding the level and nature of regulation necessary to curb opioid and marijuana abuse. States and local governments should be given deference as they struggle with these local problems. A decision invalidating Tennessee's two-year residency requirement for a retail alcohol sales license, notwithstanding the special power accorded the States by the Twenty-first Amendment, would call into serious question States' ability to deal creatively with other serious, localized issues not afforded special attention under the Constitution.

ARGUMENT

I. This Court should uphold the Tennessee residency requirement for first-time liquor licenses and reverse the Sixth Circuit's decision because the Twenty-first Amendment provides States exceedingly wide latitude to regulate the sale of alcohol.

A. The Twenty-first Amendment defers to the States as to how to regulate the importation and use of alcohol within their borders.

This Court's analysis of the Twenty-first Amendment makes clear that "States enjoy broad power . . . to regulate the importation and use of intoxicating liquor within their borders." *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 712 (1984). Reviewing Section Two of the Twenty-first Amendment for the first time, the Court held that "the words used are apt to confer upon the state the power to forbid all importations which do not comply with the conditions which it prescribes." *Young's Mkt. Co.*, 299 U.S. at 62. In that regard, the Court recognized that limiting "this broad command" to dictate that States must allow "imported liquors [to] compete with the domestic on equal terms" would "involve not a construction of the amendment, but a rewriting of it." *Id.*

Decades later, the Court still recognizes that "[t]he aim of the Twenty-first Amendment was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use." *Granholm*,

544 U.S. at 484. For that reason, "within the area of its jurisdiction, the State has 'virtually complete control' over the importation and sale of liquor and the structure of the liquor distribution system." *North Dakota v. United States*, 495 U.S. 423, 431 (1990).

It is within this context—the broad power afforded to States by the Twenty-first Amendment to regulate alcohol within their borders—that the Court should consider the constitutionality of the Tennessee durational-residency statute at issue.

B. The dormant Commerce Clause places minimal, if any, limitations on the right of States under the Twenty-first Amendment to regulate alcohol.

The text and history of the Twenty-first Amendment demonstrate that States should be free to regulate alcohol with minimal, if any, limitations imposed by the dormant Commerce Clause.

In *Granholm*, the Court reasoned that because the Twenty-first Amendment "does not abrogate Congress' Commerce Clause powers with regard to liquor," "state regulation of alcohol is limited by the nondiscrimination principle of the Commerce Clause." *Granholm*, 544 U.S. at 487. For that reason, the majority in *Granholm* held that the States' broad regulatory power under the Twenty-first Amendment did not extend to "allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers." *Id.* at 493.

However, as the dissents in *Granholm* emphasized, alcohol is not "an ordinary article of

commerce." *Id.* at 494 (Stevens, J., dissenting); *id.* at 525 (Thomas, J., dissenting). To the contrary, alcohol is the subject of a specific constitutional amendment giving the States sweeping regulatory power, so sweeping that it is reasonably read to render State regulation of alcohol immune from dormant Commerce Clause review. *See id.* at 525 ("[T]he Twenty-first Amendment likewise insulates state liquor laws from negative Commerce Clause scrutiny.").

The dissents in *Granholm* cited the Court's early cases interpreting the scope of the Twenty-first Amendment, which set forth States' "right to discriminate in its regulation of out-of-state alcohol." *Id.* at 495 (Stevens, J., dissenting). Notably, the Court in *State Board of Equalization of California v. Young's Market Company* characterized intervention into States' liquor regulatory rights as "involv[ing] not a construction of the amendment, but a rewriting of it." *Young's Mkt. Co.*, 299 U.S. at 62. A few years later, the Court concluded that "[t]he right of a state to prohibit or regulate the importation of intoxicating liquor is not limited by the commerce clause." *Indianapolis Brewing Co. v. Liquor Control Comm'n of State of Michigan*, 305 U.S. 391, 394 (1939). The Court's early analyses of the Twenty-first Amendment, close in time to the amendment's passage, were best positioned to hit on the amendment's intended scope and purpose.

Considering the broad reach of the Twenty-first Amendment and the Court's original interpretation of it, there is a compelling argument that the dissents in *Granholm* are correct in asserting that state regulation of alcohol should be

entirely exempt from dormant Commerce Clause review.

II. At a minimum, the Court should uphold State regulations dealing with alcohol so long as there is any rational basis on which the State could have determined that the regulation serves a legitimate state interest.

A. The Court should apply a deferential and lenient rational basis test that balances dormant Commerce Clause concerns with the broad power afforded to States through the Twenty-first Amendment.

Although there are compelling arguments for overturning *Granholm*, the Court need not go nearly that far to recognize that Tennessee's two-year residency requirement for an initial retail license, at issue in this case, falls well within the authority of the States to regulate alcohol.

Application of the dormant Commerce Clause and the Twenty-first Amendment is often presented as a binary choice. On one hand, some cases suggest that the dormant Commerce Clause's non-discrimination principle applies with full force to State regulation of alcohol, at least beyond the unquestioned right of the States to prohibit sales of alcohol altogether or to limit their sale to state stores or the three-tier system. *See, e.g.*, *Granholm*, 544 U.S. at 472. In contrast, other cases suggest that there are no dormant Commerce Clause limitations whatsoever on state laws regulating alcohol. *See, e.g.*, *Young's Mkt. Co.*, 299 U.S. at 62.

Amici propose, without revisiting the debate in *Granholm*, that the Court should recognize that any dormant Commerce Clause review of state alcohol regulation should be exceeding deferential. In particular, the Court should apply a lenient rational basis test when reviewing the permissibility of State regulation of alcohol. Under that approach, a State regulation of alcohol should be upheld if there is any possible rational basis for the regulation other than discrimination against out-of-state economic interests. The Court should not look behind a State regulation to make an independent judgment about its primary intent, purpose, or effectiveness; if there is any rational basis for the regulation, it should be upheld.

By adopting this kind of rational basis test, the Court would honor the special power and discretion afforded to State regulation of alcohol under the Twenty-first Amendment, while at the same time preserving the core purpose of the dormant Commerce Clause by prohibiting State regulations that could have no purpose other than blatant discrimination against out-of-state economic interests. The test harmonizes the principle that although the Twenty-first Amendment "does not abrogate Congress' Commerce Clause powers with regard to liquor," *Granholm*, 544 U.S. at 487, the amendment "created an exception to the normal operation of the Commerce Clause." *Capital Cities Cable, Inc.*, 467 U.S. at 712.

Also relevant here, apart from the Twenty-first Amendment itself, is the general principle that Congress cannot dictate to States how they must regulate private conduct within their jurisdictions.

Congress has broad powers to regulate private conduct itself and to preempt a field, but may not direct States as to how they must regulate private conduct not otherwise preempted. *See New York v. United States*, 505 U.S. 144, 162 (1992) ("While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions."). Where, as here, Congress has not acted to preempt the field, States should be and are given substantial deference as to how to govern.

Using Amici's proposed rational basis test, the Court would differentiate between a purely "protectionist tax exemption" with no purpose other than to economically benefit in-state producers, wholesalers, and retailers, and the legitimate "regulation of the three-tier distribution system." *See S. Wine & Spirits of Am., Inc. v. Div. of Alcohol & Tobacco Control*, 731 F.3d 799, 807 (8th Cir. 2013) (citing *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984)); *Bacchus*, 468 U.S. at 276 ("State laws that constitute mere economic protectionism are therefore not entitled to the same deference as laws enacted to combat the perceived evils of an unrestricted traffic in liquor.").

This approach is not inconsistent with the Court's decisions regarding price-affirmation statutes requiring alcohol to be sold at prices at or below those in neighboring states. *See Healy v. Beer Inst.*, 491 U.S. 324 (1989); *Brown-Forman Distillers Corp., v. New York State Liquor Auth.*, 476 U.S. 573 (1986); *see also* Brief for Petitioner at 40-41. A

lenient rational basis test recognizes that the Twenty-first Amendment affords States sweeping power to regulate alcohol within their own borders. Price affirmation statutes, on the other hand, reflect actions by States indirectly to regulate conduct in other States, outside the purview of the Twenty-first Amendment.

Furthermore, the Twenty-first Amendment does not immunize or limit state laws from review under provisions of the Constitution other than the Commerce Clause, such as the Equal Protection Clause of the Fourteenth Amendment. A minimal rational basis test recognizes that the purpose of the Twenty-first Amendment was to give States freedom from what otherwise would be restrictions imposed by the dormant Commerce Clause on their ability to regulate in-state commerce with regard to alcohol. The Twenty-first Amendment does not, however, exist in a vacuum and so does not free States from other constitutional limitations.

This Court has repeatedly held that "States can mandate a three-tier distribution scheme in the exercise of their authority under the Twenty-first Amendment," requiring separate licenses for producers, wholesalers, and retailers, *Granholm*, 544 U.S. at 466, and that this system is "unquestionably legitimate." *North Dakota*, 495 U.S. at 432. No case has questioned that conclusion, and rightly so.

Yet, the Sixth Circuit in the decision below read *Granholm* as requiring application of the non-discrimination principle in neutral fashion, with the courts scrutinizing the intent and effect of State regulation of alcohol as if it were an ordinary article

of commerce. If that were the correct approach, the legitimacy of the three-tier system itself would be in question, since that system certainly has a negative impact on out-of-state economic interests.

The three-tier system is "unquestionably legitimate" because when courts review State regulations of alcohol they should do so with a heavy thumb on the scale in favor of upholding the regulation. So long as there is any rational basis other than economic discrimination for the State regulation, it should be upheld, even if a court might strongly suspect that the real reason for the regulation is economic discrimination. The States are entitled to the widest possible discretion in regulating alcohol.

Applying a rational basis test, Tennessee's two-year durational residency requirement to obtain an initial retail liquor license is a legitimate use of Tennessee's power under the Twenty-first Amendment. As Judge Sutton explained in his dissent below, regulation of alcohol retailers is "critical to serving [the] interests" of "responsible consumption and orderly liquor markets" in particular because retailers are the "final link in the distribution chain." *See Byrd v. Tennessee Wine & Spirits Retailers Ass'n*, 883 F.3d 608, 633 (6th Cir. 2018) (Sutton, J, dissenting); *see also* Brief for Petitioner at 47-51 (discussing public policy reasons for two-year durational residency requirements for individual license applicants, concluding that the requirement "cannot be dismissed as mere economic protectionism").

B. States and local governments need broad discretion to develop specialized alcohol regulatory schemes because they have a distinct special interest.

States and local governments bear the brunt and cost of problems associated with alcohol sales. For example, vandalism, looting, and other damage due to drunk-and-di. rderly behavior have long followed sporting and music events where alcohol consumption is high. *See, e.g.*, Daniel I. Rees & Kevin T. Schnepel, *College Football Games and Crime*, Cornell University ILR School (Jan. 2008), *available at* http://digital commons.ilr.cornell.edu/workingpapers/72/ (confirming that local communities register dramatic increases in assaults, vandalism, and arrests on game days); Sasha Savitsky, *Country Music's Drinking Problem: Alcohol-Related Incidents at Concerts Getting Out of Hand?*, Fox News Network (Aug. 8, 2014), *available at* https://www.foxnews.com/entertainment/country-musics-drinking-problem-alcohol-related-incidents-at-concerts-getting-out-of-hand (describing a country music concert in Massachusetts in which 46 people were treated for alcohol-related illnesses and 50 people were arrested, and a New Jersey concert in which more than 100 people were arrested).

States and local governments are given broad latitude to regulate issues that are local in nature. Indeed, States and local governments are empowered to address issues ranging from education and taxation, to zoning ordinances and land use, to attorney and medical professional licensing differently, and have done so. *See, e.g.*, National Conference of State Legislatures, *2018 Preschool-3rd*

Grade Education Legislation Tracker (May 22, 2018), *available at* http://www.ncsl.org/research/education/2018-preschool-3rd-grade-education-legislation-tracker.aspx (showing State legislation regarding P-3 education at the state level); NAHB, *National Survey of Statutory Authority and Practical Considerations for the Implementation of Inclusionary Zoning Ordinances* (June 2007) (capturing zoning ordinances across the States); American Bar Assoc. Board of Governors, Task Force on the Model Definition of the Practice of Law, Appendix A, *State Definitions of the Practice of Law* (Aug. 8, 2018), *available at* https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/ (summarizing State approaches to law licensing).

States should certainly be afforded broad latitude to tailor alcohol regulation on a local basis. The Centers for Disease Control and Prevention report that the cost of excessive alcohol use—costs resulting from loss in workplace productivity, health care expenses, law enforcement and criminal justice expenses, and motor vehicle crashes—reached $249 billion in 2010, where two out of every five dollars were paid by federal, state, and local governments. And the cost to States varied widely. CDC, *Excessive Drinking is Draining the U.S. Economy* (July 13, 2018), *available at* https://www.cdc.gov/features/costsofdrinking/index.html (excessive alcohol use costs ranged from $488 million in North Dakota to $35 billion in California, with the District of Columbia hosting the highest cost per person, and New Mexico the highest cost per drink).

Of course, the stakes can be even higher. According to the U.S. Department of Transportation, drunk driving incidence differs dramatically across the States. *See* U.S. Dept. of Transportation, National Highway Traffic Safety Administration, *Alcohol-Impaired Driving*, 7 (Nov. 2018), *available at* https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812630 (reporting that in 2017, the number of drunk driving fatalities ranged from 23 in the District of Columbia and 44 in Vermont on the low end, to 3,074 in California and 3,538 in Texas on the high end; Tennessee had 962 drunk-driving-related fatalities).

Amici's proposed rational basis test gives States and municipalities the regulatory flexibility they need to address these critical issues at a local level. At the same time, by not negating entirely the dormant Commerce Clause, the proposed test protects against regulations that manifestly have no possible purpose other than to discriminate against out-of-state economic interests.

Accordingly, to resolve this case, the Court should ask whether Tennessee could have a rational basis for concluding that a two-year durational residency requirement serves a legitimate State interest in regulating alcohol. The regulation should be upheld unless it could have no purpose other than discrimination against out-of-state economic interests. Under that test, the two-year durational residency requirement easily passes muster and should be upheld.

III. States and local governments' ability to effectively regulate alcohol has broad implications for other substances that also have a special local impact.

Elevating the dormant Commerce Clause over the Twenty-first Amendment in the context of alcohol regulation would affect State and local governments' ability to legislate in other areas of public concern. The Twenty-first Amendment grants broad power to the States to regulate alcohol. If this constitutional grant of power is read narrowly to limit state flexibility to regulate alcohol, then States' flexibility to regulate in other areas that are not subject to specific constitutional grants of power, but nonetheless concern localized, pressing problems, could be severely limited.

For example, States and local governments are currently grappling with the level and nature of regulation necessary to curb opioid and marijuana abuse. In doing so, States and local governments weigh the medical benefits of opioid drugs with the risk of addiction. Likewise, some States recognize medical benefits of marijuana while others do not. In acting in these areas, States and local governments must strike difficult balances, all while respecting (and not discriminating against) other States' approaches to the same issues. *See* National Conference of State Legislatures, *State Medical Marijuana Laws* (Nov. 8, 2018), *available at* http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx (summarizing state medical marijuana program laws, including extent to which dispensaries are allowed, out-of-state patients are recognized, and retail sales are allowed); National

Conference of State Legislatures, *Prescribing Policies: States Confront Opioid Overdose Epidemic* (Oct. 31, 2018), *available at* http://www.ncsl.org/research/health/prescribing-policies-states-confront-opioid-overdose-epidemic.aspx (describing state prescribing policies, monitoring programs, and other strategies); *see also Whalen v. Roe*, 429 U.S. 589, 603 n.30 (1977) (recognizing that States have "broad police powers in regulating the administration of drugs by the health professions."). States and local governments should be given deference as they struggle with those local problems.

Of course, the Constitution does not bestow additional power on (or otherwise explicitly reserve regulatory power to) States and local governments to manage these issues, as it does in the context of alcohol. All the more reason the Court's decision here will have a broader impact on State regulation of marijuana and opioids. A decision striking down Tennessee's two-year durational residency regulation where the Twenty-first Amendment provides States extraordinary power to legislate would call into serious question States' ability to deal creatively with other serious, localized issues that are *not* afforded special attention under the Constitution.

CONCLUSION

The Twenty-first Amendment affords States exceedingly wide latitude and discretion to regulate the sale of alcohol within their borders. Amici propose that the Court accordingly adopt a deferential rational basis test for dormant Commerce Clause review of State regulation of alcohol, under which a State regulation will be upheld so long as it bears any rational relationship to a legitimate State interest in controlling the sale and use of alcohol. State regulation of alcohol violates the dormant Commerce Clause only if the regulation could have no purpose other than discrimination against out-of-state economic interests. Under that test, Tennessee's two-year durational residency requirement easily passes muster.

Respectfully submitted,

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